

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>KEVIN R. TAYLOR</b>	)	
Claimant	)	
VS	)	
	)	
<b>ASPLUNDH TREE EXPERT CO.</b>	)	
Respondent	)	Docket No. 255,042
	)	
and	)	
	)	
<b>RELIANCE NATIONAL INSURANCE CO.</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent and its insurance carrier appealed the September 3, 2002 Order entered by Administrative Law Judge (ALJ) John D. Clark. The Appeals Board (Board) placed this case on its summary docket for a decision without oral argument.

**APPEARANCES**

Claimant appeared by Andrew E. Busch of Wichita, Kansas. Respondent and its insurance carrier appeared by Gregory D. Worth of Roeland Park, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Board is listed in the February 12, 2002 Award, together with the transcripts of the April 16, 2002, and the August 27, 2002 post award hearings, the exhibits attached to each of those transcripts and the pleadings in the administrative file. The admissibility of the documents attached to claimant's September 3, 2002, letter to Judge Clark are at issue. The record contains no additional stipulations

post award, but respondent's counsel did agree at the August 27, 2002 hearing to pay \$1,262.34 for claimant's prescription expenses incurred before February 20, 2002.<sup>1</sup>

### ISSUES

This matter came before Judge Clark on claimant's May 29, 2002, Application for Post Award Medical requesting "Reimbursement for prescription expenses ordered by Honorable John D. Clark on April 16, 2002." On April 16, 2002, Judge Clark had issued an order that: "1. The Respondent is ordered to furnish the names of three physicians for selection of one by the claimant for treatment. 2. Prescription expenses incurred prior to February 20, 2002, are ordered paid." Also, on August 6, 2002 claimant's counsel filed another Application for Post Award Medical this time seeking "payment of medical bills of Wesley Hospital."

On August 14, 2002, claimant filed another Application for Post Award Medical. Again, rather than seeking authorization for treatment, the nature of the request was for "Payment of medical bills of Duncan Regional Hospital."<sup>2</sup> The letter dated August 13, 2002 that accompanied said application likewise described the purpose as "The payment of the Duncan Regional Hospital bills as indicated in the enclosed demand to Respondent."<sup>3</sup>

On September 3, 2002, Judge Clark issued an Order that provided:

1. Prescription expenses in the amount of \$1,262.34 are ordered paid.
2. Prescription expenses in the amount of \$4,455.98 are ordered reimbursed by the Respondent to be paid to the Claimant.
3. The medical expenses of \$298.14 and \$268.14 to Duncan Regional Hospital are ordered paid as unauthorized medical.
4. Post award attorney fees are assessed against the Respondent in the amount of \$250.00.

Respondent and its insurance carrier appealed that Order stating the issue for the Board's review as:

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<sup>1</sup> P. A. H. Trans. at 8 (Aug. 27, 2002) ; Respondent's Brief at 2 and 5 (Oct. 17, 2002).

<sup>2</sup> Form K-WC E-4 Application for Post Award Medical (filed Aug. 14, 2002).

<sup>3</sup> August 13, 2002 letter to Division of Workers Compensation by Andrew E. Busch.

1. Whether Judge Clark exceeded his authority in ordering payment of medical bills totaling \$566.28 as unauthorized medical expense where he had previously ordered other bills paid as unauthorized medical expenses.
2. Whether Judge Clark exceeded his authority at a hearing on an Application for Post Award Medical in ordering payment of medical bills incurred prior to entry of the final Award, as either authorized or unauthorized medical expense.
3. Whether claimants [sic] submitted sufficient evidence to support an award of prescription reimbursement in the amount of \$4,455.98, in addition to the reimbursement voluntarily paid for prescriptions in the amount of \$1,262.34.
4. Whether Judge Clark had authority to reconsider the issue of appropriate prescription reimbursement after having ruled on that issue by Order dated April 16, 2002, and as a result of a hearing conducted on that same date.<sup>4</sup>

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In addition to the above chronology, certain other dates and facts are important to a resolution of this appeal.

- June 20, 2000; Judge Clark ordered Anthony G. A. Pollock, M.D., as claimant's authorized treating physician. That Order also provided, in part, that "All medical is ordered paid, including reimbursement." This Order was appealed to the Board and affirmed on September 5, 2000.
- July 24, 2000; claimant filed a Motion for a Penalties requesting ". . . the Court to impose statutory sanctions upon Respondent for their failure to comply with the court order regarding medical expenses." That motion contained a notice of hearing for August 17, 2000.

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<sup>4</sup> Brief of Respondent in Support of Appeals Board Review (filed Oct. 4, 2002).

- August 17, 2000 - Order:  
“Claimant’s Motion for Penalties is denied. This matter is on Appeal to the Board.” (It does not appear that the claimant renewed his Motion for Penalties following the Board’s September 5, 2000 Order).
- November 7, 2001 - Order:  
“Prescription expense of Dr. Jon Parks is ordered paid as authorized.”
- December 20, 2001 - Order:  
“Prescription expenses is [sic] presented are ordered paid as unauthorized up to the statutory limit.”
- February 12, 2002 - Award entered by Judge Clark; included findings that “Claimant is entitled to all his outstanding and unauthorized medical, up to the statutory limit. Future medical will be considered upon proper application to the Director.”<sup>5</sup>
- February 21, 2002 - respondent and its insurance carrier filed their Application for Appeals Board Review of the February 12, 2002 Award.
- March 14, 2002 - Motion for Penalties wherein claimant “. . . requests the court to impose statutory sanctions upon Respondent for their failure to comply with the Court’s Order regarding medical expenses and prescription expenses dated December 20, 2001 and for failure to comply with the Award of Compensation dated February 12, 2002.” (It does not appear that a hearing was held on this motion.)
- September 30, 2002 - Order by the Appeals Board modifying the February 12, 2002 Award for permanent partial general disability from 85 percent to 42 percent and ordering “. . . ongoing medical care.”

**Issue No. 1** - “Whether Judge Clark exceeded his authority in ordering payment of medical bills totaling \$566.28 as unauthorized medical expense where he had previously ordered other bills paid as unauthorized medical expenses.”

Claimant’s Exhibit 1 to the transcript of the August 27, 2002 post award hearing contains two (2) medical bills from Duncan Regional Hospital in Duncan, Oklahoma for emergency room services provided claimant on June 25, 2001 in the amount of \$298.35

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<sup>5</sup> Award at 8 (Feb. 12, 2002).

and June 27, 2001 in the amount of \$286.14.<sup>6</sup> Those exhibits were admitted without objection. Claimant testified that he went to the Duncan Regional Hospital on those dates due to back pain while visiting in Oklahoma. He further testified that his authorized treating physician, Dr. Jon Parks had instructed him to seek treatment at the emergency room if he needed treatment after regular office hours. Claimant's testimony is supported by the June 4, 2002 letter signed by Jon C. Parks, M.D., which is claimant's Exhibit 2 to the transcript of the August 27, 2002 post award hearing. Respondent and its insurance carrier argue that the order to pay these two hospital emergency room bills totaling \$566.28 [sic] exceeds Judge Clark's jurisdiction because Judge Clark had previously "ordered that such treatment was unauthorized and that respondent be required to pay only up to the statutory amount for unauthorized medical treatment."<sup>7</sup> Presumably, respondent and its insurance carrier paid Duncan Regional Hospital \$500 as unauthorized medical expense and the amount shown as unpaid and owing represents the remaining balance. In the Brief of Claimant to Appeals Board, "Claimant concedes to Respondent's statement that the Court cannot order the payment of unauthorized medical expenses in excess of \$500 therefore the Court could not order payment of the emergency room expenses if in fact they were not authorized. Claimant, however, believes that the emergency room visits were in fact authorized. . . ." <sup>8</sup>

The Board agrees that respondent and its insurance carrier cannot be required to pay an amount in excess of the statutory limit for unauthorized medical expenses. However, it appears that Judge Clark failed to realize that he had already ordered any outstanding balances for the Duncan Regional Hospital emergency room visits to be paid as authorized medical in his February 12, 2002 Award. It provides, "claimant is entitled to all his outstanding . . . medical. . . ." That portion of the ALJ's Award was not modified by the Board's September 30, 2002 Order. The Board's Order specifically provided that "the Board adopts the remaining orders set forth in the Award that are not inconsistent with the above." Accordingly, any portion of the Duncan Regional Hospital bill that remained unpaid as of the date of Judge Clark's Feb. 12, 2002 Award was ordered paid by respondent and its insurance carrier as authorized medical. The Award is final and cannot be modified to change the unpaid portion of the Duncan Regional Hospital emergency room bill from authorized to unauthorized.

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<sup>6</sup> Accordingly, paragraph three of Judge Clark's Sept. 3, 2002 Order, which reflects these outstanding expenses as \$298.14 and \$268.14 for a total of \$566.28 appears to be in error.

<sup>7</sup> Respondent's Brief at 3.

<sup>8</sup> Claimant's Brief at 1-2.

**Issue No. 2** - “Whether Judge Clark exceeded his authority at a hearing on an Application for Post Award Medical in ordering payment of medical bills incurred prior to entry of the final Award, as either authorized or unauthorized medical expense.”

As stated above, the Award provided for the payment for all outstanding medical. Accordingly, Judge Clark did not exceed his authority by reiterating in his Order of September 3, 2002 that those bills be paid. Judge Clark is enforcing terms of his prior order as set forth in the February 12, 2002 Award, which was adopted by reference by the Board in its Order of September 30, 2002. The fact that this matter came before Judge Clark on an Application for Post Award Medical as opposed to a motion for penalties is immaterial.

**Issue No. 3** - “Whether claimants [sic] submitted sufficient evidence to support an award of prescription reimbursement in the amount of \$4,455.98, in addition to the reimbursement voluntarily paid for prescriptions in the amount of \$1,262.34.”

Respondent and its insurance carrier contend, “claimant is entitled to the \$1,262.34 as the respondent agreed to pay on the record. However, the \$4,455.98 ordered paid in addition to the amount already agreed to by the respondent seems to have been calculated by some mystical formula understood only by Judge Clark.”<sup>9</sup> As noted above, claimant’s counsel submitted an itemization with supporting billings and receipts to Judge Clark on September 3, 2002. That “Exhibit” contained a “prescription breakdown” which showed total prescriptions paid of \$5,720.32 of which \$1,264.34 were allegedly authorized and paid by claimant out of pocket and \$4,455.98 were allegedly unauthorized and paid by claimant out of pocket. The “Exhibit” listed expenses some of which pre-dated the Award, and continued all the way up through June 3, 2002.

Counsel for respondent and its insurance carrier contend that the first time he became aware of and was provided a copy of claimant’s September 3, 2002 “Exhibit” was with the Brief of Claimant to Appeals Board filed August 16, 2002. This contention is supported by the September 3, 2002 cover letter addressed to Judge Clark which shows that it was “hand-delivered” and no copy is shown as being sent to counsel for respondent and its insurance carrier. Moreover, as the “Exhibit” reportedly was hand-delivered to Judge Clark on September 3, 2002, and the date of Judge Clark’s Order is likewise September 3, 2002, obviously, respondent and its insurance carrier had no opportunity to respond to that document. In addition, respondent and its insurance carrier contend that Judge Clark did not leave the record open for the receipt of additional evidence. The transcript of the August 27, 2002 post award hearing is not clear in this regard. Near the

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<sup>9</sup> Respondent’s Brief at 5.

conclusion of that hearing there appears the following discussion between the court and counsel:

The Court: So what is the total on that?

Mr. Busch: \$2,899.08. I am relying on my secretary's addition of those things. We have several demands going out, and I think they are all included in there. If Your Honor wants, I will submit something within five days.

Mr. Andersen: Your Honor, how am I supposed [sic] to respond to that? I am just asking you. I can't tell what the numbers are.

Mr. Busch: They are the same numbers I have been forwarding to your office since - -

The Court: Where are they in this exhibit?

Mr. Busch: There is not a total. There is [sic] several demands in there.

The Court: I see that.

Mr. Busch: It is the total of the demands.

The Court: I will take this under advisement for five days.

Mr. Busch: Thank you.

The Court: Thank you, gentlemen.<sup>10</sup>

Obviously, Judge Clark understood this to mean that the record would remain open for five (5) days as he accepted and utilized claimant's September 3, 2002 "Exhibit" figures in his Order of that same date. Nevertheless, as the record is unclear and there was obvious confusion in this regard, and as the respondent and its insurance carrier were not given an opportunity to respond to claimant's September 3, 2002 letter and "Exhibit," this issue should be remanded to the ALJ for further proceedings and additional consideration

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<sup>10</sup> P.A.H. Trans. at 15-16.

based upon any additional evidence or argument counsel for respondent and its insurance carrier desires to provide and consistent with the findings and conclusions of the Board contained herein.

**Issue No. 4** - “Whether Judge Clark had authority to reconsider the issue of appropriate prescription reimbursement after having ruled on that issue by Order dated April 16, 2002, and as a result of a hearing conducted on that same date.”

Judge Clark’s April 16, 2002 Order provided for respondent and its insurance carrier “to furnish the names of three physicians for selection of one by the claimant for treatment” and ordered respondent and its insurance carrier to pay all of claimant’s “prescription expenses incurred prior to February 20, 2002.” The significance of the February 20, 2002 date was that on that date counsel for respondent and its insurance carrier sent a letter to Dr. Jon Parks which provided, in part, as follows:

Please note that an Award of compensation was recently entered in regard to this workers’ compensation claim by the Administrative Law Judge. As a result of that award of compensation, any prior orders of the court which had designated you as an authorized treating physician are no longer in effect.

Please allow this to serve as notice that my clients no longer recognize your care and treatment of Mr. Taylor to be authorized in nature and they will not voluntarily pay for any additional services or treatment which you provide Mr. Taylor.<sup>11</sup>

Judge Clark did not exceed his authority by revisiting the issue of post award medical treatment after his April 16, 2002 Order, particularly in light of the fact that his Order only addressed claimant’s outstanding prescription expenses “prior to February 20, 2002.” The respondent and its insurance carrier did not authorize another physician to treat claimant until some time after Judge Clark’s April 16, 2002 Order, when respondent submitted to claimant a list of three (3) names from which claimant selected a new authorized treating physician. However, on September 30, 2002 the Board issued its Order on the appeal of Judge Clark’s February 12, 2002 Award. The Board’s Order specifically provided “claimant is entitled to receive ongoing medical care until further order.” Judge Clark entered such an order by ordering respondent to submit a list of three (3) names to replace Dr. Parks as the authorized physician on April 16, 2002. Respondent and its insurance carrier provided that list in a letter dated May 22, 2002.<sup>12</sup> Accordingly, Dr. Parks remained the authorized treating physician until May 22, 2002. Therefore, all

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<sup>11</sup> P.A.M. (Apr. 30, 2002) Trans. Resp. Ex. 1.

<sup>12</sup> P.A.H. Trans. at 14.



medical expenses, including those for any prescriptions, authorized by Dr. Parks and incurred before May 22, 2002 should be paid by respondent and its insurance carrier as authorized medical treatment expenses.

**Award**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Post Award Order entered by Administrative Law Judge John D. Clark on September 3, 2002 should be, and the same is hereby modified in accordance with the above findings and conclusions and, in addition, Issue Number 3 is hereby remanded to the Administrative Law Judge for further proceedings and orders consistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of December 2002.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Andrew E. Busch, Attorney for Claimant  
       Gregory D. Worth, Attorney for Respondent and Insurance Carrier  
       John D. Clark, Administrative Law Judge  
       Director, Division of Workers Compensation

**KEVIN R. TAYLOR**

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**DOCKET NO. 255,042**